

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on February 13, 2025

COMMISSIONERS PRESENT:

Rory M. Christian, Chair
James S. Alesi
David J. Valesky
John B. Maggiore
Uchenna S. Bright
Denise M. Sheehan
Radina R. Valova

CASE 14-M-0224 - Proceeding on Motion of the Commission to
Enable Community Choice Aggregation Programs.

ORDER DENYING REHEARING

(Issued and Effective February 14, 2025)

BY THE COMMISSION:

INTRODUCTION

The Public Service Commission (Commission) received a petition for rehearing (Petition) from NRG Energy, Inc. (NRG) and its affiliates,¹ (collectively, Petitioners) on December 19, 2024, seeking a stay and rehearing of the Commission's Community Choice Aggregation (CCA) Order Modifying Outreach and Education

¹ The Petition states that NRG's retail companies operating in New York include Reliant Energy Northeast LLC d/b/a NRG Home and d/b/a NRG Business Solutions, Green Mountain Energy Company, Energy Plus Holdings LLC, Energy Plus Natural Gas LLC, Independence Energy Group LLC d/b/a Cirro Energy, XOOM Energy New York, LLC, Stream Energy New York, LLC, Direct Energy Business, LLC, Direct Energy Business Marketing, LLC, Direct Energy Services, LLC, and Gateway Energy Services Company.

Requirements and Directing Program Evaluation.² Specifically, in its petition, NRG expresses concern about: (1) the O&E Modification Order's prohibition on sharing consumer account numbers between an Energy Services Company (ESCO) and CCA Administrators after the opt-out period has concluded, and (2) the requirement to obtain affirmative customer consent each time such information is sent by the ESCO to the CCA Administrator, as may be required by a contract, known as an Energy Service Agreement (ESA), executed between the municipality, ESCO, and CCA Administrator.

By this Order, the Commission denies the Petition because it is untimely, fails to identify an error in fact or law committed by the Commission in the O&E Modification Order, and does not demonstrate any new circumstances that warrant a different determination.

BACKGROUND

On April 21, 2016, the Commission established the necessary framework for the development of CCA programs.³ The CCA Framework Order established three types of data that CCA Administrators would require to effectuate CCA programs: (a) aggregated customer and consumption (usage) data to support procurement; (b) customer contact information to send opt-out letters; and (c) detailed customer information for the purpose of enrolling and serving each customer.⁴ The CCA Framework Order explained that after each municipality entered into a CCA

² See Case 14-M-0224, Order Modifying Outreach and Education Requirements and Directing Program Evaluation (issued November 19, 2024) (O&E Modification Order).

³ Case 14-M-0224, Order Authorizing Framework for Community Choice Aggregation Opt-Out Program (issued April 21, 2016) (CCA Framework Order).

⁴ CCA Framework Order, pp. 42-43.

contract with an ESCO, the utility shall transfer customer contact data to the municipality or CCA Administrator to facilitate the mailing of opt-out letters. At that time, customer contact data was intended to consist of the customer of record's name, mailing address, telephone number, account number, and primary language.⁵

On October 19, 2017, the Commission issued an order authorizing Municipal Electric and Gas Alliance, Inc. (MEGA) to serve as a CCA Administrator.⁶ The MEGA Order reevaluated the inclusion of customer account numbers as part of the allowable data transfers between the utilities and municipalities or CCA Administrators. The MEGA Order indicated that "[w]hile customer account numbers were originally envisioned as useful information in the CCA Framework Order to clearly identify customers who were to be enrolled in the program after the opt-out process, the Commission now finds that the account numbers are not essential to identify customers to conduct the opt-out phase."⁷

In its O&E Modification Order, the Commission affirmed the existing CCA Program Rules and provided clarification that, while an ESCO can receive the customer account number from the utility after the opt-out period ends, ESCOs are prohibited from transferring "customer account numbers back to the CCA Administrator without proof of explicit customer consent that the individual account holder has agreed to have their account

⁵ CCA Framework Order, p. 44.

⁶ Cases 16-M-0015 et al., Order Approving Community Choice Aggregation Program and Utility Data Security Agreement with Modifications (issued October 19, 2017) (MEGA Order).

⁷ MEGA Order, p. 22; see also *id.* at 22-23 (discussing potential misuse of customer account numbers and negative consequences).

number shared with the CCA Administrator by the ESCO and for what purposes.”⁸

LEGAL AUTHORITY

Pursuant to Public Service Law (PSL) §22, any person or corporation may apply for rehearing of a Commission order within 30 days of issuance, unless directed otherwise. The petitioner seeking rehearing bears the burden of establishing that the Commission committed an error of law or fact or that new circumstances warrant a different determination.⁹ Further, the petitioner must separately identify and explain each alleged error or new circumstance purporting to warrant rehearing.¹⁰

PETITION FOR REHEARING

The Petitioners seek rehearing and a stay of the Commission’s O&E Modification Order, arguing that the Commission erred in prohibiting ESCOs from sharing customer account numbers with CCA Administrators after the opt-out period ends, without explicit customer consent. Further, the Petitioners assert that a prohibition on ESCOs transferring customer utility account numbers to CCA Administrators, without explicit customer consent, would cause NRG and its affiliates to violate the tri-party contract (or ESA) executed between themselves, the Municipality, and the CCA Administrator. NRG asserts that the ESAs require the ESCO to provide a report weekly, or upon request, to the CCA Administrator that details customer specific information including the customer utility account numbers. NRG claims that the requirement for customer consent to share data

⁸ O&E Modification Order, pp. 46-47.

⁹ 16 NYCRR §3.7(b).

¹⁰ Id.

makes it unable to comply with the existing terms of the ESA without obtaining customer consent on a weekly basis, thereby creating confusion and frustration with the process.

NRG additionally argues that the O&E Modification Order ignored the existing Data Security Agreement (DSA) requirements that the ESCOs and CCA Administrator have each entered into with the applicable utility. NRG argues that in executing a DSA with the utilities, they are required to uphold certain cybersecurity standards, further arguing that it is arbitrary and contrary to existing practice to prohibit an ESCO from sharing customer information, including utility account numbers, with the CCA Administrator without affirmative customer consent.

NRG requests that: (1) the Commission grant rehearing with respect to the prohibition on sharing utility account information with CCA Administrators after the opt-out period has ended; and (2) the Commission grant rehearing on the requirement to obtain affirmative customer consent to exchange information required for the administration of the CCA program. Alternatively, NRG requests clarification on its existing and future ESAs,¹¹ which require NRG to routinely share information without affirmative customer consent, including customer account information, with the CCA Administrator as part of the CCA program.

DISCUSSION AND CONCLUSION

The Commission remains committed to ensuring that appropriate protections are in place to protect customer data through the establishment, and when necessary, modification, of data privacy rules and responsibilities. This is especially

¹¹ We note that the NRG ESCOs did not include the actual executed contracts as part of the rehearing petition.

true in an opt-out program where a customer has not affirmatively consented to participation and by way of that participation, the sharing of their data with another party. As discussed above, while the 2016 CCA Framework Order did initially allow customer account numbers to be available as part of the customer contact data set, that ability was removed the following year in the 2017 MEGA Order. Any changes to the rules adopted as part of the CCA Framework Order, as well as clarifications and refinements to these requirements in subsequent orders, are codified as part of the CCA Program Rules.¹²

The CCA Program Rules clearly articulate the three customer data sets allowed to be shared as part of a CCA program, what customer data is available, who the utility can share the data with, and for what purpose.¹³ The allowed customer data sets are:

1. Aggregated Customer and Consumption Data: Aggregated data sent from the utility to the municipality or CCA Administrator for procurement purposes.
2. Customer Specific Customer Information: Opt-out eligible customer contact information to facilitate mailing of opt-out letters. This information is sent from the utility to the municipality or CCA Administrator.
3. Detailed Customer Information: After the opt-out period has ended, the utility may share detailed customer information with the ESCO, for facilitation of enrollment and program participation, consistent with Electronic Data Interchange standards.

¹² Case 14-M-0224, CCA Program Rules (filed December 12, 2024).

¹³ CCA Program Rules 45 - 59.

The CCA Framework Order and the MEGA Order reiterated that ESCOs could receive detailed customer information pursuant to existing Uniform Business Practices (UBPs), but did not allow for the ESCO to share this customer information with the CCA Administrator.¹⁴ Additionally, the CCA Framework Order states that the "terms of the contract between the municipality and the ESCO or ESCOs providing service must comply with generally applicable requirements for ESCO service at the time the contract is entered into, including the terms of the February Reset Order as applicable."¹⁵ The UBP states that:

[A]n ESCO, its employees, agents, and designees, are prohibited from selling, disclosing or providing any customer information obtained from a distribution utility or [Meter Data Service Provider], in accordance with this Section, to others, including their affiliates, unless such sale, disclosure or provision is required to facilitate or maintain service to the customer or is specifically authorized by the customer or required by legal authority. If such authorization is requested from the customer, the ESCO shall, prior to authorization, describe to the customer the information it intends to release and the recipient of the information.¹⁶

The CCA Framework rules have been in place since 2016. NRG and its ESCO affiliates have served CCA programs in New York under those rules.

The CCA Program Rules and UBPs are clear on what data can be shared, with whom, for what purposes, and only ever

¹⁴ MEGA Order, p. 23.

¹⁵ CCA Framework Order, p. 32.

¹⁶ See UBP Section 4F, available at <https://dps.ny.gov/uniform-business-practices>.

consistent with what the customer has given consent for. Even in the CCA program construct, where proxy consent is given by the municipality in lieu of individual consent, data sharing must still comply with Commission rules and requirements. Neither the proxy consent nor any ESA terms would override individual customer consent requirements when the ESCO is seeking to share customer data outside of the intended purpose that consent was obtained for. In other words, the ESCO cannot share customer specific details with any party until it has first received affirmative consent to do so, no matter what it has agreed to in an ESA. Further, the argument that CCA Administrators can obtain customer account information directly from the utility is incorrect. The only customer information the utility is allowed to share with the CCA Administrator is the aggregated data set and customer contact information used to facilitate mailing of opt-out letters, neither of which include account number or customer billing information.¹⁷

The Commission finds NRG's arguments and petition details very concerning as both NRG, and the Administrators they are contracted with, are not new to the CCA market and should be aware of the CCA Program Rules that have been in effect for almost a decade, as well as the ESCO UBP requirements related to customer data sharing. NRG has not pointed to a Commission rule that would allow the ESCO to share unconsented customer specific account information, including account number, with any party, including the CCA Administrator or municipality. Accordingly, the Commission does not find that the Petitioner presents an error of law or fact or that new circumstances warrant a different determination that triggers a rehearing on the O&E Modification Order.

¹⁷ CCA Program Rules 49 - 58.

With respect to NRG's alternative request for clarification, the Commission reminds NRG that it is required to abide by all applicable terms of the UBPs as an ESCO, even when it operates within a CCA program. In the O&E Modification Order, the Commission confirmed the applicability of the previously established UBP, UBP-DERS, and CCA Program Rules. While the Commission did provide further discussion in its O&E Modification Order, specifically to address similar comments made by NRG in response to the proposal, there were no new rules adopted related to the ability to share customer specific information without consent. If NRG wished to seek rehearing on these data sharing rules from the 2016 CCA Framework Order or the 2017 MEGA Order, it would have needed to do so within the 30-day timeframe allotted under PSL §22, which would have expired several years prior to the issuance of the O&E Modification Order.

As stated above, the Petition is untimely, fails to identify an error in fact or law committed by the Commission in the O&E Modification Order, nor does it point to any new circumstance that warrants a different determination. For these reasons, the Commission denies NRG's request for rehearing.

The Commission orders:

1. The Petition for Rehearing filed by NRG Energy, Inc. and its affiliates, on December 19, 2024, is denied for the reasons discussed in the body of this Order.
2. This proceeding is continued.

By the Commission,

(SIGNED)

MICHELLE L. PHILLIPS
Secretary